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In the Matter of)
)
Expanded Interconnection with) CC Docket No. 91-141
Local Telephone Company Facilities)
)
Amendment of the Part 69 Allocation) CC Docket No. 92-222
of General Support Facilities Costs)

OPPOSITION TO EMERGENCY PETITION OF MFS
TO HOLD PROCEEDINGS IN ABEYANCE

New York Telephone Company ("NYT") and New England Telephone and Telegraph Company ("NET"), collectively the "NYNEX Telephone Companies" or "NTCs", hereby file their Opposition to the Emergency Petition of MFS Communications, Inc. ("MFS") to hold in abeyance (1) the Common Carrier Bureau's review of the local exchange carrier ("LEC") zone

services. By inducing bureaucratic paralysis in the Commission's review of the LEC rates, MFS would force the LECs to maintain a price "umbrella" under which competitive access providers ("CAPS") like MFS would have an easy opportunity to lock up the market. So long as the LECs' rates continued to be uneconomically high due to study area averaging and due to overallocations of GSF costs, end users would have an overwhelming incentive to shift their circuits to the lower-priced services of the CAPs. Under the extremely liberal tariff rules that the Commission has applied to the CAPs as non-dominant carriers, they would continue to be treated as non-dominant even if this uneconomic pricing advantage allowed them to capture 100 percent of the market. This would not be competition, and MFS knows it.

MFS cannot accept the fact that Commission actions to increase competition, such as its decision in this proceeding to require expanded interconnection, will tend to drive prices down. That is the primary reason why competition is in the public interest. That is why customers like competition. It would serve no purpose for the Commission to mandate increased competition and then, as urged by MFS, to prohibit price competition by requiring the LECs to maintain artificial price ceilings.

The most telling indication that MFS does not "get it" is its comment that the Commission should ignore any support by end users for LEC rate reductions. In MFS' view, end users are simply "narrow private interests" whose views are misguided and

irrelevant.² MFS does not grasp (or chooses to ignore) the concept that common carriers exist to serve the public. The public does not exist to guarantee MFS success in its chosen business.

Although MFS styles its petition as a request to hold the above-referenced proceedings in abeyance, it is actually requesting a stay of those proceedings. However, MFS has failed to meet the requirements for a stay.³ MFS provides no evidence to support its allegation that it would suffer "imminent and irreparable competitive harm" if the Commission acted on the zone density plans and on the GSF allocation rule ~~before it addressed the LEC term and volume discounts.~~ MFS

no data to support its allegation that the LECs are currently pricing their Special Access services at predatory levels. Indeed, the only data that MFS cites show that the volume and term discount rates currently offered by the LECs are well above cost.⁵ Moreover, if the LEC prices were at predatory levels, by definition they would be designed to drive out competition. Yet, by all accounts, competition from the CAPs is thriving throughout the country.⁶

The critical flaw in MFS' argument is its assumption that even if current LEC rates are above cost, rate reductions of up to 25 percent due to zone density pricing and GSF reallocation would produce below-cost rates.⁷ However, the data it cites to show that current LEC rates are close to cost

⁵ See Id. at p. 8.

⁶ The Commission has noted that the CAPs have achieved over 40 percent of the Special Access market in metropolitan New York, despite the fact that the New York Public

are study area average costs.⁸ Zone density pricing is based on the Commission's finding, supported by many parties in Docket 91-141, that LEC costs are lower than the study area average in the high density zones and above average in the low density zones.⁹ Deaveraged costs should be substantially below the average costs levels cited by MFS. However, by allowing the LECs to reduce their tariffs by only 10 percent in the high density zones and by limiting offsetting rate increases to 5 percent in the low density zones, the Commission has not allowed the LECs to reflect the full extent of the cost differences associated with differences in traffic density. Thus, there is no logical reason why zone density deaveraging of rates and removal of the overallocation of GSF costs should cause rates to fall below costs.

Finally, MFS' allegation that "unbridled rate flexibility" for the LECs will "leave competitive special access services stillborn" is missing an essential ingredient; a showing that the LEC rate reductions would underprice the CAPs, and that the CAPs would not be in a position to match the LEC rate reductions. MFS does not care to even describe its own rate levels, much less its costs. However, MFS' FCC tariff allows it to reduce rates without limit, and the CAPs generally

⁸ See Docket 91-141, cost data filed by Bell Atlantic, Ameritech, and Pacific Bell on January 15, 1993. The carriers generally included costs for land and buildings in calculating the direct cost of each service.

⁹ See Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Report and Order and Notice of Proposed Rulemaking, FCC 92-440, released October 19, 1992, para. 175.

This harm is particularly acute for LECs, like the NTCs, that have implemented interim expanded interconnection tariffs. For example, since NYT's interim expanded interconnection tariff became effective in mid-December 1992, the CAPs have gained approximately 7 percent of the interstate DS1 central office-to-POP circuits in the NYT central offices where they are collocated. At the rate that the interstate collocated circuits are growing, the CAPs will install more DS1 circuits to their collocated spaces in the five months that the interim expanded interconnection tariffs will be effective than in the 18 months that the state collocation tariffs have been in effect. ¹⁰ Thus, the NTCs are already suffering

competitive harm by being required to offer physical collocation while being forced to maintain uneconomically high rates. MFS would compound this harm by extending this uneconomic burden on the NTCs indefinitely. It is the LECs who need immediate relief if they are to compete effectively with the CAPs in a collocated environment.

MFS' request clearly is not in the public interest. If the LECs were forced to maintain uneconomically high rates, customers would pay more both to the LECs and to the CAPs, and demand would be suppressed. Although end users would pay lower prices to the CAPs than under the LECs' existing tariffs, they would not pay prices as low as would be produced by effective competition. The full public benefits of the Commission's pro-competitive policies in general, and of its expanded interconnection policies in particular, would never be realized if MFS had its way.

The Commission should reject MFS' transparent attempt to "game" the regulatory process to advance its own interests at the expense of the LECs and the public. The Commission's decision to impose expanded interconnection requirements on the


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larger than the state market. In addition, the offices where the CAPs are currently collocated in New York provide access to 56 percent of NYT's DS1 circuits to IXC POPs in the state and to 75 percent of NYT's DS1 circuits to POPs in the New York metro LATA.

LECs makes it crucial that the Commission allow the LECs to align their rates with costs. There is no reason for the Commission to stay its actions on zone density pricing and GSF reallocation. MFS' petition should be dismissed.

Respectfully submitted,

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and
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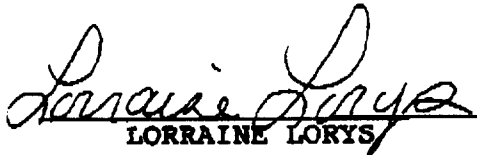
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Dated: April 7, 1993

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing
OPPOSITION TO EMERGENCY PETITION OF MFS TO HOLD PROCEEDINGS IN
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